

REMARKS

The Applicants do not believe that entry of the foregoing amendment will result in the introduction of new matter into the present application for invention.

Therefore, the Applicants, respectfully, request that the above amendment be entered in and that the claims to the present application, kindly, be reconsidered.

The Advisory Action dated November 2, 2004 has been received and considered by the Applicants. Claims 1-20 are pending in the present application for invention. Claims 1-4 and 6-20 stand rejected by the Advisory Action dated November 2, 2004. Claim 5 is objected to by the Examiner for depending upon a rejected base claim but is stated as otherwise being allowable.

The Advisory Action states that Claims 1-2, 4, 6-10, and 12-16, 18 and 19 remain rejected under the provisions of 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,191,889 issued to Maruyama (hereinafter referred to as Maruyama). The Examiner states that Maruyama discloses all the recited elements of the rejected claims. The Applicants, respectfully, disagree. Maruyama discloses a diffraction grating and the rejected claims do not recite a diffraction grating. The present invention recites a phase structure made of a material having temperature-dependent properties and resulting in a non-periodic pattern of optical paths for the radiation beam. There Applicants believe that there is no disclosure, or suggestion within Maruyama for a phase structure as recited by the rejected claims. The Applicants respectfully point out that diffraction grating taught by Maruyama is formed using a saw tooth pattern. The present invention teaches a phase structure that is not at all similar to the saw tooth pattern taught by Maruyama. Therefore, in an effort to move this case towards allowance, the Applicants have amended the claims to clearly distinguish the claims to the present invention from the teaching of Maruyama. The claims after the foregoing amendment recite that "each of the annular areas has a width measured radially from the optical axis and a consistent height along the width measured along the optical axis." The Applicants respectfully submit that even a very broadest reading of Maruyama can not read on annular areas has a width measured radially from the optical axis and a consistent height along the width measured along the optical axis. Accordingly, the claims as amended are believed to be allowable over the teachings of Maruyama.

The Advisory Action states that the rejection of Claims 1-2, 8, 10-15, 17, 18 and 20 -14 under the provisions of 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,590,708 B1 issued to Nakai et al. (hereinafter referred to as Nakai et al.) stands. The Examiner states that Nakai et al. disclose all the recited elements of the rejected claims. The Applicants, respectfully, disagree. The diffraction grating taught by Nakai et al. is formed in, essentially, a saw tooth pattern. The present invention teaches a phase structure that is not at all similar to the saw tooth pattern taught by Nakai et al. Therefore, in an effort to move this case towards allowance, the Applicants have amended the claims to clearly distinguish the claims to the present invention from the teaching of Nakai et al. The claims after the foregoing amendment recite that "each of the annular areas has a width measured radially from the optical axis and a consistent height along the width measured along the optical axis." The Applicants respectfully submit that even a very broadest reading of Nakai et al. can not read on annular areas has a width measured radially from the optical axis and a consistent height along the width measured along the optical axis. Accordingly, the claims as amended are believed to be allowable over the teachings of Nakai et al.

The Advisory Action states that the rejection Claim 3 under the provisions of 35 U.S.C. §103(a) as being obvious over Maruyama in view of U.S. Patent No. 6,154,326 issued to Ueyanagi et al. (hereinafter referred to as Ueyanagi et al.) stands. The Applicants, respectfully, submit the above discussed amendment to the claims obviates this rejection.

Applicant is not aware of any additional patents, publications, or other information not previously submitted to the Patent and Trademark Office which would be required under 37 C.F.R. 1.99.

In view of the foregoing amendment and remarks, the Applicant believes that the present application is in condition for allowance, with such allowance being, respectfully, requested.

Respectfully submitted,

By 

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Please direct all correspondence

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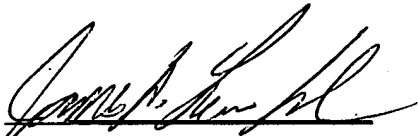
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on: November 9, 2004

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Signature:



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